

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In Re:

SAUK-SUIATTLE INDIAN TRIBE,

Plaintiff,

v.

CITY OF SEATTLE and SEATTLE CITY
LIGHT, a subdivision of the City of Seattle,

Respondents.

Case No. 2:21-cv-01014 (BJR)

**RESPONDENTS' REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
MOTION FOR DISMISSAL UNDER
FED. R. CIV. PRO. 12(b)(1) AND 12(b)(6)**

**I. THE COURT SHOULD TAKE JUDICIAL NOTICE OF FEDERAL ENERGY
REGULATORY COMMISSION ("FERC") ORDERS AND PLEADINGS ON
FILE AT FERC**

Respondents City of Seattle and Seattle City Light ("City Light") hereby respectfully request that this Court take judicial notice of the FERC orders and pleadings on file with FERC that are attached hereto as Exhibits 1 through 6 in support of Respondents' Motion for Dismissal Under Fed. R. Civ. Pro. 12(b)(1) and 12(b)(6).

Courts may take judicial notice of matters that are either "generally known within the trial court's territorial jurisdiction" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). Public records and

1 other publicly filed documents are proper subjects of judicial notice. *Cnty. Ass'n for*
 2 *Restoration of the Env't, Inc. v. George & Margaret LLC*, 954 F. Supp. 2d 1151, 1159 (E.D.
 3 Wash. 2013) (taking judicial notice of Consent Order issued by Environmental Protection
 4 Agency under the Safe Drinking Water Act); *see also United States ex rel. Jones v. Sutter*
 5 *Health*, 499 F. Supp. 3d 704, 709–10 (N.D. Cal. 2020) (citing *United States v. Black*, 482
 6 F.3d 1035, 1041 (9th Cir. 2007)).

7 Furthermore, “courts may take judicial notice of undisputed matters of public record,
 8 such as documents on file with administrative agencies.” *Benanav v. Healthy Paws Pet Ins.,*
 9 *LLC*, 495 F. Supp. 3d 987, 993 (W.D. Wash. 2020). “[M]atters of public record” include
 10 “FERC orders.” *In re W. States Wholesale Nat. Gas Antitrust Litig.*, 633 F. Supp. 2d 1151,
 11 1168 (D. Nev. 2007). *See also FERC v. Barclays Bank PLC*, 105 F. Supp. 3d 1121, 1130
 12 (E.D. Cal. 2015), *as amended* (May 22, 2015) (taking judicial notice of various FERC orders
 13 and related documents). To the extent any facts in documents subject to judicial notice are
 14 subject to reasonable dispute, the Court will not take judicial notice of those facts. *See Lee v.*
 15 *City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001), *overruled on other grounds*
 16 *by Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002).

17 The FERC licenses and orders governing the operation of the Gorge Dam (*see*
 18 Exhibits 1–4 and 6) are appropriate subjects of judicial notice because they are “matters of
 19 public record” on file with FERC, a public agency. *See Benanav*, 495 F. Supp. 3d at 993.
 20 Similarly, the Settlement Agreement (Exhibit 5) also is a public record on file with FERC and
 21 therefore may be noticed by the court. *Barclays Bank*, 105 F. Supp. 3d at 1130; *In re Avista*
 22 *Corp. Secs. Litig.*, 2004 U.S. Dist. LEXIS 33666, at *10–13 (E.D. Wash. 2004) (taking
 23 judicial notice of FERC filings).

24 **II. EXHIBITS**

25 Pursuant to the foregoing authority, City Light requests that the Court take judicial
 26 notice of the following documents, filed as Exhibits to this Request:

Exhibit 1: Federal Power Commission,¹ License on Government Lands, Project No. 553, Washington, City of Seattle (Oct. 28, 1927) (“1927 License”). A copy of this document is publicly available (<http://clerk.seattle.gov/search/clerk-files/113817>; click on “PDF Copy: Comptroller File 113817”), and Exhibit 1 is a true and correct copy of the same.

Exhibit 2: Order Conditionally Approving Interim Offer of Settlement, 15 FERC 61,144 (May 12, 1981), 1981 WL 35104. This document is on file with FERC, and Exhibit 2 is a true and correct copy of the same.

Exhibit 3: Order Declaring Interim Settlement Effective and Partially Releasing a Condition, 16 FERC 61,044 (July 24, 1981), 1981 WL 33308. This document is on file with FERC, and Exhibit 3 is a true and correct copy of the same.

Exhibit 4: Order Accepting Settlement Agreement, Issuing New License, and Terminating Proceeding, 71 FERC 61,159 (May 16, 1995), 1995 WL 301337 (“1995 License Order”). A copy of this document is publicly available (<https://www.seattle.gov/light/skagit/docs/P553%20FERC%20License%20Order%201995.pdf>), is on file with FERC, and Exhibit 4 is a true and correct copy of the same.

Exhibit 5: Revised Fisheries Settlement Agreement, Skagit River Hydroelectric Project, FERC No. 553 (Jan. 2011). A copy of this document is publicly available (<http://www.seattle.gov/light/skagit/relicensing/default.htm>; go to Skagit Background Documents folder, Fish & Aquatics subfolder, and Fish Resources subfolder, and click on “Seattle City Light, 2011, Revised Fisheries Settlement Agreement”), is on file with FERC, and Exhibit 5 is a true and correct copy of the same.

Exhibit 6: FERC’s Study Plan Determination for the Skagit River Hydroelectric Project (July 16, 2021). A copy of this document is publicly available (<http://www.seattle.gov/light/skagit/relicensing/default.htm>; go to Relicensing Documents

¹ The Federal Power Commission is the predecessor agency of FERC.

1 folder, Licensing & Regulatory subfolder, and Study Plan Determination subfolder, and click
2 on “7/16/2021 FERC Study Plan Determination for the Skagit River Hydroelectric Project”),
3 is on file with FERC, and Exhibit 6 is a true and correct copy of the same.

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6 DATED this 5th day of August, 2021.

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CERTIFICATE OF SERVICE

I certify that on August 5, 2021, I arranged for electronic filing of the foregoing document and its Exhibits 1 - 6 thereto with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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DATED this 5th day of August, 2021 at Seattle, Washington.

By s/Dawnelle Patterson
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